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PACIFIC BELL TELEPHONE COMPANY

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE,

Plaintiff,

v.

PACIFIC BELL TELEPHONE  
COMPANY,

Defendant.

CASE NO. 2:21-cv-00073-JDP

**DECLARATION OF JON DAVID  
KELLEY IN SUPPORT OF PACIFIC  
BELL'S OPPOSITION TO BELOW  
THE BLUE'S "ADMINISTRATIVE"  
MOTION FOR EXTENSIONS OF  
TIME AND FOR "TOLLING"**

Magistrate Judge Hon. Jeremy D. Peterson

Complaint Filed: January 14, 2021

1 I, Jon David Kelley, hereby declare as follows:

2 1. I am a partner at the law firm of Kirkland & Ellis LLP and counsel for Defendant Pacific  
3 Bell Telephone Company (“Pacific Bell”) in the above-captioned litigation. I submit this declaration in  
4 support of Pacific Bell’s Opposition to Below the Blue’s (“BtB”) “Administrative” Motion for  
5 Extensions of Time and for “Tolling.” I have personal knowledge of the facts set forth herein and, if  
6 called as a witness, I could and would testify competently thereto.  
7

8 2. On November 24, counsel for Pacific Bell received an email from an attorney named  
9 Joshua Koltun, who identified himself as counsel for BtB, Seth Jones, Monique Fortner, and Marine  
10 Taxonomic Services, Ltd. A true copy of Mr. Koltun’s November 24 email is attached as **Exhibit A**.  
11

12 3. On November 28, Mr. Koltun served a single set of responses and objections to Pacific  
13 Bell’s subpoena on behalf of BtB, Seth Jones, Monique Fortner, and MTS. A true copy of these  
14 responses and objections is attached as **Exhibit B**.

15 4. On November 29, counsel for Pacific Bell conferred with BtB’s counsel, and Mr. Koltun  
16 acknowledged that his fees were being paid by Dow Jones—the parent company of the Wall Street  
17 Journal (“WSJ”).

18 5. During the November 29 meet and confer, BtB’s counsel acknowledged that BtB entered  
19 into a written agreement with Environmental Defense Fund (“EDF”) in early 2022.  
20

21 6. Counsel for BtB also represented that BtB entered into an oral agreement with the WSJ in  
22 2022, whereby Seth Jones and Monique Fortner of BtB allegedly agreed to act as reporters for the WSJ  
23 in connection with its series on lead-clad cables.

24 7. Mr. Koltun asserted that BtB was therefore entitled to assert the reporter’s privilege, and  
25 that he intended to assert this privilege in a motion for reconsideration of the Court’s November 9  
26 decision to be filed on December 14.  
27  
28

10. BtB failed to produce a single document by the November 30 Court-ordered deadline.

Executed December 4, 2023, in Dallas, Texas.

By:

James